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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ALVIN HENNINGTON, JR.

11 Plaintiff,

12 v.

13 FEDERAL BUREAU OF  
INVESTIGATION,

14 Defendant.  
15

Civil No.08cv1033 JAH (LSP)

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS [Doc. No. 11]**

16 **BACKGROUND**

17 Plaintiff originally filed a complaint in Superior Court of California, County of San  
18 Diego on March 3, 2008 against the Federal Bureau of Investigation. On June 10, 2008,  
19 the matter was removed to federal court and later transferred to this Court pursuant to the  
20 low number rule. Plaintiff filed a motion for entry of default judgment, which the Court  
21 denied as premature and unwarranted. See Order (Doc. No. 10).

22 On August 11, 2008, Defendant filed a motion to dismiss. Plaintiff did not file a  
23 timely response. Instead, Plaintiff filed numerous motions for default judgment that were  
24 either denied or rejected by this Court as improper. See Doc. Nos. 12, 13, 14, 15, 16, 17,  
25 18. Defendant's motion was set for hearing on September 15, 2008, but was taken under  
26 submission without oral argument. On September 29, 2008, Plaintiff filed a request for  
27 counsel and on October 24, 3008, submitted an untitled document asking the Court to  
28 deny Defendant's motion to dismiss. On December 22, 2008, Plaintiff filed another

1 motion for entry of default judgment.

## 2 DISCUSSION

3 Defendant moves to dismiss under Federal Rules of Civil Procedure 8, 12(b)(1) and  
4 12(b)(6). Defendant argues the complaint fails to comply with the pleading requirements  
5 of Rule 8, Plaintiff failed to comply with the Federal Tort Claims Act's administrative  
6 claims requirement and improperly named the FBI as a defendant.

7 Plaintiff argues the motion should be denied "on the grounds that you have to show  
8 presedence [sic] and legal grounds in order to dismiss case that is already in default."  
9 Response at 1 (Doc. No. 28). There is no record of a default in this action. In fact, this  
10 Court has repeatedly denied Plaintiff's various motions for entry of default judgment, as  
11 premature and unwarranted, because Plaintiff failed to obtain entry of default from the  
12 Clerk of Court and Defendant responded timely to the complaint by filing the pending  
13 motion to dismiss. Additionally, as discussed further below, Defendant provides sufficient  
14 grounds for dismissal.

### 15 I. Legal Standards

#### 16 A. Rule 8

17 Under Rule 8(a) of the Federal Rules of Civil Procedure, a complaint "shall contain  
18 (1) a short and plain statement of the grounds upon which the court's jurisdiction depends  
19 . . . , (2) a short and plain statement of the claim showing that the pleader is entitled to  
20 relief, and (3) a demand for judgment for the relief the pleader seeks." Fed.R.Civ.P. 8(a).  
21 Similarly, Rule 8(d) requires that "each averment of a pleading shall be simple, concise and  
22 direct." Rule 8 is designed to provide defendants with fair notice of the claims against  
23 them and the grounds on which those claims rest. McKeever v. Block, 932 F.2d 795, 798  
24 (9<sup>th</sup> Cir. 1991); see McHenry v. Renne, 84 F.3d 1172, 1177 (9<sup>th</sup> Cir. 1996).

#### 25 B. Rule 12(b)(1)

26 Under Federal Rule of Civil Procedure 12(b)(1), a defendant may seek to dismiss  
27 a complaint for "lack of jurisdiction over the subject matter." Fed.R.Civ.P. 12(b)(1). "A  
28 motion to dismiss for lack of subject matter jurisdiction may either attack the allegations

of the complaint or may be made as a ‘speaking motion’ attacking the existence of subject matter jurisdiction in fact.” Thornhill Publishing Co. v. General Telephone Corp., 594 F.2d 730, 733 (9<sup>th</sup> Cir.1979).

Defendant argues Plaintiff failed to meet the jurisdictional requirement for maintaining a tort claim against the federal government by filing an administrative claim. 28 U.S.C. § 2675(a) provides in relevant part that “[a]n action shall not be instituted upon a claim against the United States for money damages . . . unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing.” A plaintiff’s filing of an administrative claim is jurisdictional, and must be adhered to strictly. Brady v. United States, 211 F.3d 499, 502 (9<sup>th</sup> Cir. 2000).

### C. Rule 12(b)(6)

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint. Navarro v. Block, 250 F.3d 729, 732 (9<sup>th</sup> Cir. 2001). Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal theory. Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 534 (9<sup>th</sup> Cir. 1984); see Neitzke v. Williams, 490 U.S. 319, 326 (1989) (“Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law.”). Alternatively, a complaint may be dismissed where it presents a cognizable legal theory yet fails to plead essential facts under that theory. Robertson, 749 F.2d at 534. While a plaintiff need not give “detailed factual allegations,” he must plead sufficient facts that, if true, “raise a right to relief above the speculative level.” Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007).

## II. Analysis

The Court has reviewed the complaint. Plaintiff appears to assert claims for “conflict of interest [sic]”, harassment, slander, “psychological [sic] torture”, sodomy, rape, invasion of privacy and medical malpractice, and seeks fifty million dollars. See Complaint (Doc. No. 1). Plaintiff’s complaint alleges he was harassed and tortured and received death threats, hypnosis and thought implantation in an attempt to “blow”

1 Plaintiff's case for 2.5 million dollars that "went into default." According to the  
2 allegations of the complaint, all the acts were committed by police officers. The complaint  
3 is devoid of any allegations against Defendant FBI and therefore fails to state a claim  
4 against the FBI. Furthermore, Plaintiff fails to demonstrate he filed an administrative claim  
5 as required. Therefore, the complaint is subject to dismissal.

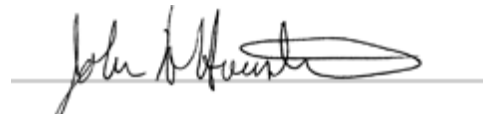
6 The Court also finds, to the extent Plaintiff is asserting a tort claim against  
7 Defendant FBI, the FBI is not a proper defendant. The Federal Tort Claims Act ("FTCA")  
8 "is the exclusive remedy for tort actions against a federal agency" and the United States  
9 is the only proper defendant for claims arising under the FTCA. Kennedy v. U.S. Postal  
10 Serv., 145 F.3d 1077 (9<sup>th</sup> Cir. 1998).

### 11 CONCLUSION AND ORDER

12 Based on the foregoing, IT IS HEREBY ORDERED:

- 13 1. Defendant's motion to dismiss is **GRANTED**. The complaint is dismissed  
14 without prejudice.
- 15 2. Plaintiff's motion for counsel (Doc. No. 23) is **DENIED as moot**.
- 16 3. Plaintiff's motion for entry of court judgment is **DENIED as moot**.

17 DATED: January 7, 2009

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19 JOHN A. HOUSTON  
20 United States District Judge  
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